

REMARKS

Summary

Claims 1-13, 15-28 and 30-33 stand in this application. Claims 14 and 28 have been cancelled without prejudice. No new matter has been added. Favorable reconsideration and allowance of the standing claims are respectfully requested.

35 U.S.C. § 103

At page 2, paragraph 2 of the Office Action claims 1-4, 6-8, 11, 13-16, 18, 19, 20-24 and 28-33 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over US 5,940,504 to Griswold ("Griswold") in view of US 6,330,670 to England et al. ("England"). Applicants respectfully traverse the rejection, and request reconsideration and withdrawal of the obviousness rejection.

The Office Action has failed to meet its burden of establishing a *prima facie* case of obviousness. According to MPEP § 2143, three basic criteria must be met to establish a *prima facie* case of obviousness. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). See MPEP 706.02(j).

As recited above, to form a *prima facie* case of obviousness under 35 U.S.C § 103(a) the cited references, when combined, must teach or suggest every element of the claim. See MPEP § 2143.03, for example. Applicants respectfully submit that the Office Action has not established a *prima facie* case of obviousness because the cited references, taken alone or in combination, fail to teach or suggest every element recited in claims 1-4, 6-8, 11, 13-16, 18, 19, 20-24 and 28-33. Therefore claims 1-4, 6-8, 11, 13-16, 18, 19, 20-24 and 28-33 define over Griswold and England whether taken alone or in combination. For example, claim 1 recites the following language, in relevant part:

establishing a secure communication environment between a monitored program and a managing program using a security code, wherein said monitored program and said managing program comprise said security code embedded therein.

As correctly noted in the Office Action, Griswold fails to teach, suggest or “encrypting said time interval or license.” According to the Office Action, the missing language is disclosed by England at column 10, lines 4-13. Applicants respectfully disagree. England at the given cite, in relevant part, states:

In an alternate exemplary embodiment, the challenge-response protocol runs over a secure connection such as SSL (Secure Socket Layer) or TLS (Transport Level Security), which relies on a session key to encrypt the data transferred between the subscriber computer 200 and the content provider 220.

By way of contrast, the claimed subject matter teaches “establishing a secure communication environment between a monitored program and a managing program using a security code, wherein said monitored program and said managing program comprise said security code embedded therein.”

Applicants respectfully submit that England fails to teach, suggest or disclose the above recited language of claim 1. England, arguably, teaches a challenge-response protocol that uses a session key to encrypt data transferred between a computer and a content provider over a secure connection such as SSL (Secure Socket Layer) or TLS (Transport Level Security). However, applicants respectfully submit that England fails to teach, suggest or disclose “wherein said monitored program and said managing program comprise said security code embedded therein.” Applicants submit that England fails to teach embedding the session key (e.g. security key) on both sides of the challenge-response process (e.g. the monitored program and the managing program respectively), and therefore, England fails to teach each and every element recited in claim 1. Therefore, England fails to disclose, teach or suggest the missing language. Consequently, Griswold and England, whether taken alone or in combination, fail to disclose, teach or suggest every element recited in claim 1.

Furthermore, if an independent claim is non-obvious under 35 U.S.C. § 103, then any claim depending therefrom is non-obvious. *See* MPEP § 2143.03, for example. Accordingly, removal of the obviousness rejection with respect to claim 1 is respectfully requested. Claims 2-4, 6-8 and 11 also are non-obvious and patentable over Griswold and England, taken alone or in combination, at least on the basis of their dependency from claim 1. Applicants, therefore, respectfully request the removal of the obviousness rejection with respect to these dependent claims.

Independent claims 15, 20, 22, 30 and 32 recite features similar to those recited in claim 1. Therefore, Applicants respectfully submit that claims 15, 20, 22, 30 and 32 are not obvious and are patentable over Griswold and England for reasons analogous to those

presented with respect to claim 1. Accordingly, Applicants respectfully request removal of the obviousness rejection with respect to claims 15, 20, 22, 30 and 32. Furthermore, Applicants respectfully request withdrawal of the obviousness rejection with respect to claims 16, 18, 19, 21, 23, 24, 31 and 33 that depend from claims 15, 20, 22, 30 and 32 respectively, and therefore contain additional features that further distinguish these claims from Griswold and England, taken alone or in combination.

At page 4 of the Office Action claims 5 and 17 stand rejected under 35 U.S.C. § 103(a) as being unpatentable Griswold in view of England and in view of US 5,291,596 to Mita ("Mita"). Applicants respectfully traverse the rejection, and requests reconsideration and withdrawal of the obviousness rejection.

Applicants respectfully submit that claims 5 and 17 are patentable and non-obvious over Griswold in view of England and Mita, whether taken alone or in combination, because the cited references fail to disclose, teach or suggest all the language recited in claims 5 and 17. Furthermore, claims 5 and 17 depend from claims 1 and 15 respectively. As discussed above, Griswold and England fail to disclose, teach or suggest the missing language of claims 1 and 15. Applicants submit that Mita also fails to disclose, teach or suggest the missing language of claims 1 and 15. Therefore, claims 5 and 17 represent patentable subject matter over the cited references for reasons analogous to those presented with respect to claims 1 and 15 above. Moreover, claims 5 and 17 are dependent claims and therefore contain additional features that further distinguish these claims from the cited references. Accordingly, Applicants respectfully request removal of the obviousness rejection with respect to these dependent claims.

At page 5 of the Office Action claims 9, 10, 25 and 26 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Griswold in view of England and in view of US 2001/0052013 to Munguia ("Munguia"). Applicants respectfully traverse the rejection, and request reconsideration and withdrawal of the obviousness rejection.

Applicants respectfully submit that claims 9, 10, 25 and 26 are patentable and non-obvious over Griswold in view of England and Munguia, whether taken alone or in combination, because the cited references fail to disclose, teach or suggest all the language recited in claims 9, 10, 25 and 26. Furthermore, claims 9, 10, 25 and 26 depend from claims 1 and 22 respectively. As discussed above, Griswold and England fail to disclose, teach or suggest the missing language of claims 1 and 22. Applicants submit that Munguia also fails to disclose, teach or suggest the missing language of claims 1 and 22. Therefore, claims 9, 10, 25 and 26 represent patentable subject matter over the cited references for reasons analogous to those presented with respect to claims 1 and 22 above. Moreover, claims 9, 10, 25 and 26 are dependent claims and therefore contain additional features that further distinguish these claims from the cited references. Accordingly, Applicants respectfully request removal of the obviousness rejection with respect to these dependent claims.

At page 5 of the Office Action claims 12 and 27 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over US 5,940,504 to Griswold ("Griswold") in view of JP 10320070A. Applicants respectfully traverse the rejection, and request reconsideration and withdrawal of the obviousness rejection.

Applicants respectfully submit that claims 12 and 27 are patentable and non-obvious over Griswold in view JP 10320070A, whether taken alone or in combination,

because the cited references fail to disclose, teach or suggest all the language recited in claims 12 and 27. Applicants respectfully submits that claims 12 and 27 recite a limitation similar to that recited in independent claims 1, 15, 20, 22, 30 and 32 discussed above. In particular, claims 12 and 27 recite the following language: "said monitored program and said managing program comprising a security code embedded therein...."

As discussed above, Griswold fails to disclose, teach or suggest the missing language. Applicants submit that JP 10320070A also fails to disclose, teach or suggest the missing language. Therefore, claims 12 and 27 represent patentable subject matter over the cited references for reasons analogous to those presented with respect to claims 1, 15, 20, 22, 30 and 32 above. Moreover, claims 12 and 27 contain additional features that further distinguish these claims from the cited references. Accordingly, Applicants respectfully request removal of the obviousness rejection with respect to claims 12 and 27.

For at least the reasons given above, claims 1-13, 15-28 and 30-33 are non-obvious and represent patentable subject matter in view of the cited references, whether taken alone or in combination. Accordingly, removal of the obviousness rejections with respect to claims 1-13, 15-28 and 30-33 is respectfully requested. Further, Applicants submit that the above-recited novel features provide new and unexpected results not recognized by the cited references. Accordingly, Applicants submit that the claims are not anticipated nor rendered obvious in view of the cited references.

Applicants do not otherwise concede, however, the correctness of the Office Action's rejection with respect to any of the dependent claims discussed above. Accordingly, Applicants hereby reserve the right to make additional arguments as may be


necessary to further distinguish the dependent claims from the cited references, taken alone or in combination, based on additional features contained in the dependent claims that were not discussed above. A detailed discussion of these differences is believed to be unnecessary at this time in view of the basic differences in the independent claims pointed out above.

It is believed that claims 1-13, 15-28 and 30-33 are in allowable form. Accordingly, a timely Notice of Allowance to this effect is earnestly solicited.

The Examiner is respectfully requested to contact the undersigned by telephone if such contact would further the examination of the present patent application.

Respectfully submitted,

KACVINSKY LLC



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Under 37 CFR 1.34(a)

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